

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
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FISCAL IMPACT STATEMENT

LS 7286

BILL NUMBER: SB 493

DATE PREPARED: Jan 8, 2002

BILL AMENDED:

SUBJECT: IURC Communications and Deliberations.

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FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
FEDERAL

IMPACT: State

Summary of Legislation: This bill amends the Open Door Law to permit the Indiana Utility Regulatory Commission (IURC) to deliberate rate cases in executive session. The bill prohibits a commissioner, an administrative law judge, or an employee or agent of the IURC who is assigned to a proceeding from communicating with a party to the proceeding unless the party files a notice of the communication with the IURC.

The bill allows the IURC to add to the value of an energy utility's property for ratemaking purposes the value of certain qualified property constructed by the utility to comply with state or federal mandates. The bill allows an energy utility to recover through a retail rate adjustment mechanism governmentally mandated costs incurred in providing retail energy service. The bill provides that a petition by a public or municipally owned electric utility or a rural electric membership corporation (REMC) for a fuel cost charge includes the costs of purchased electricity. It allows a public utility providing electric or gas service or an REMC to implement rates proposed by the utility in a petition for a change in its basic rates if the IURC fails to issue an order on the petition within nine months for a public utility or within six months for an REMC. It requires the utility or REMC to refund to customers any difference between the rate implemented and the higher of the rate: (1) finally approved; or (2) previously in effect.

The bill provides that a merger, consolidation, reorganization, or stock transaction involving an energy company may not occur without IURC approval if the transaction will cause more than 51% of the company's voting stock to be held by different interests. The bill requires the IURC to approve the transaction unless after the transaction the utility will lack the capability to provide adequate and reliable service.

The bill allows the IURC to impose a civil penalty of up to \$5,000 if a public utility or an REMC violates any utility law or fails to comply with: (1) a standard of service established by IURC rule; or (2) a rate or service requirement of an IURC order. The bill allows the IURC to impose an additional penalty of up to \$10,000 if the violation or failure demonstrates a disregard by the public utility or REMC of its duty to

remedy the violation or failure. The bill specifies that a suit to recover a penalty imposed by the IURC shall be brought by the Attorney General.

The bill provides that merchant power plants are subject to the jurisdiction of the IURC. It requires the IURC to notify the local zoning authority of a petition for approval of a merchant power plant. The bill requires the IURC to consider any land use plan or other information provided by the zoning authority.

Effective Date: Upon passage; July 1, 2002.

Explanation of State Expenditures: *IURC Communications and Deliberations:* This bill would allow IURC administrative law judges, commissioners, or employees assigned to a formally docketed proceeding before the IURC to communicate with a party involved in the proceeding if the party agrees to submit a written notice of the communication with the administrative law judge or commissioner assigned to the party's proceeding and the secretary of the Commission for inclusion in the public record. This provision will have a minimal impact on the IURC's administrative costs.

Ratemaking: The bill makes several changes to the expenses and investments made by a public utility or REMC that can be considered as recoverable during ratemaking proceedings. The bill also provides for the establishment of a retail rate adjustment mechanism that allows utilities to recover governmentally mandated costs. These provisions will require the IURC and the OUCC to make adjustments to their current investigatory and auditing procedures.

IURC Jurisdiction over Mergers: This bill increases the authority of the IURC over mergers, reorganizations, or the acquisition of control of certain public utilities. The bill requires the IURC to approve certain mergers when at least 51% of the currently held shares are acquired by a firm or investor. Depending on the number of mergers affected by this provision, the IURC will be required to hold additional proceedings and conduct to additional investigations.

Enforcement Authority: This proposal allows the IURC to fine certain regulated utilities (including telephone companies that serve over 50,000 customers) and REMCs that fail to comply with service standards or requirements, as ordered by the Commission. Although this provision gives the IURC more enforcement authority over these utilities, it is not expected to require the IURC to hold additional hearings.

Merchant Power Plants: This bill places merchant power plants under the jurisdiction of the IURC. Under this proposal, a new merchant power plant would be required to petition the IURC for approval to construct the facility. The bill allows the IURC to consider the following when reviewing a plant's petition: location, need, the plant's impact on utility suppliers and customers, financing, other factors that the Commission considers relevant, and information provided to the Commission by local authorities with zoning jurisdiction. The bill also requires the IURC to notify the appropriate county or municipal agency having zoning jurisdiction in the location where the merchant power plant is proposed within seven days after receiving a petition to approve a merchant plant.

While the provisions above could increase the costs of the IURC and OUCC, increases to IURC's and the OUCC's administrative costs would be covered using the funding mechanism currently provided for in law (see *Background on IURC and OUCC Funding*, below).

Attorney General: The Attorney General would be required to enforce an order in court if the order was appealed in court. If more legal actions are sought, the administrative burden of the Attorney General's

Office may increase. However, since the bill allows the Attorney General to recover the reasonable cost of maintaining the action from the offending utility, the impact of this provision may be partially mitigated.

Background Information on Merchant Power Plants: As of August 2001, there were seven merchant power plants operating in Indiana. Six plants have petitions currently under review with the IURC.

Background on IURC and OUCC Funding: The operating budgets of the IURC and OUCC are funded by regulated utilities operating in Indiana. The IURC determines the rate at which to bill the utilities based on the two agencies' budgets, less reversions, divided by the total amount of gross intra-state operating revenue received by the regulated utilities for the previous fiscal year. Based on this formula, utilities are currently billed approximately 0.10% of their gross intra-state operating revenues to fund the IURC and OUCC. In FY 2001, fees from the utilities and fines generated approximately \$8.6 M.

The state's utility costs could increase if electricity and natural gas rates are increased as a result of this bill.

Explanation of State Revenues: *Civil Penalties:* The bill gives the IURC the authority to impose a penalty of up to \$5,000 on certain regulated public utilities (including telephone companies that serve over 50,000 customers) and REMCs for each failure to comply with a service standard established by a Commission rule or with a rate or service order issued by the Commission. The bill also gives the Commission the authority to impose an additional penalty of up to \$10,000 for each violation if the Commission finds that an offending utility has willfully disregarded its obligation to remedy previous failures. Civil penalties under this provision would be deposited in the state General Fund.

Explanation of Local Expenditures: Local governmental entities, including schools, would be subject to any increases in the cost of the electricity caused by the provisions in this bill.

Explanation of Local Revenues:

State Agencies Affected: Indiana Utility Regulatory Commission; Office of the Utility Consumer Counselor; Attorney General's Office.

Local Agencies Affected: Local units of government with zoning jurisdiction in areas with proposed merchant power plants.

Information Sources: Indiana Utility Regulatory Commission, *2000-2001 Annual Report*.